**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.3846 OF 2006

1. Shri Anil Ashok Donde & ors, .. Petitioners

Vs

Shri Kisan Gahina Kute, .. Respondent.

Mr N.J.Patil, for the petitioners.
Ms Smita Gaidhani, for the respondent.

**CORAM : D.B.BHOSALE,J.**
**DATE : 19.08.2006**

**PC:**

1. Heard the learned counsel for the parties.

2. In this petition, the petitioners have impugned the order dated 3.12.2005, by which their application under Order VI rule 17 of the Code of Civil Procedure seeking permission to amend the pleading, has been rejected. Mr N.J.Patil, learned counsel for the petitioners, submitted that the amendment would be necessary for deciding the issues involved in the suit. He further submitted that such amendment can be allowed at any stage of the proceedings and in support thereof he placed reliance upon the judgments of the Supreme Court in Rajesh Kumar Aggarwal and ors Vs K.K.Modi and ors, 2006 (4) Mh.L.J. 719 and in Pankaja and anr Vs Yellappa (D) by LRs and ors, 2004(7) SRJ 305. Admittedly in this case, the suit has reached the final stage. The suit

was filed in 2002. The written statement was also filed in 2003. The evidence has already been recorded and the matter is placed for argument and judgment. Keeping that in view, I do not wish to interfere with the order passed by the trial Court, that being an inter-locutory order. The interest of justice would be met if all the contentions in the present petition are kept open for the petitioners to be agitated in appeal in the event the suit filed by the petitioners is dismissed. Hence, I pass the following order.

(i) This petition is disposed of with, liberty to the petitioners to raise all contentions and also to challenge the findings recorded in the impugned order in appeal or in cross-objection as the case may be after disposal of the suit.

(D.B.BHOSALE,J.)